A

Kerajaan Negeri Trengganu & Ors v Dr Syed Azman Syed Ahmad Nawawi & Ors (No 2)

B

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO 23NCVC-106–12 OF 2011
YEOH WEE SIAM J
3 SEPTEMBER 2012

C

Civil Procedure — Action — Defamation — Whether Menteri Besar may initiate and maintain action for defamation in his official capacity

D

Civil Procedure — Locus standi — Menteri Besar — Whether Menteri Besar may initiate and maintain action for defamation in his official capacity

Civil Procedure — Parties — Menteri Besar — Whether Menteri Besar may initiate and maintain action for defamation in his official capacity

E

Civil Procedure — Pleadings — Issues not pleaded — Exceptions to restriction against the court deciding on unpleaded issues — Court's inherent jurisdiction to hear submissions on preliminary issues which were not pleaded

F

Constitutional Law — State government — Menteri Besar — Rights to commence legal action — Whether Menteri Besar may initiate and maintain action for defamation in his official capacity

G

Tort — Defamation — Parties — Menteri Besar — Whether Menteri Besar may initiate and maintain action for defamation in his official capacity

H

Upon the preliminary issues raised by the defendants, on 27 July 2012 the court had made the ruling, inter alia, that the first plaintiff, being the Government of the State of Terengganu had no locus standi to maintain the action for the tort of defamation against the defendants. Accordingly, the first plaintiff's claim was struck out. Issue then arose as to whether the second plaintiff could maintain the action for the tort of defamation against the defendants.

I

Held, striking out the second plaintiff's claim with costs:

(1) A court cannot decide a case outside that which has been made out in the

pleadings. However, this does not limit the court's inherent jurisdiction to hear submissions on preliminary issues which have to be decided at the outset of the trial in order that the full trial of the civil suit can be undertaken properly and efficiently. Even though it was not raised by the defendants in their statement of defence the issue of whether the second plaintiff could maintain the action for defamation against the defendants, it was incumbent upon the court to decide on the crucial preliminary issue whether the second plaintiff was suing the defendants in his official capacity as the Menteri Besar of Terengganu, or in his personal capacity, and whether he could maintain the action in either or both capacities (see paras 4–5).

(2) The second plaintiff had no capacity, according to law, to sue the defendants in his official capacity as the Menteri Besar of Terengganu. This was premised on the fact that the Menteri Besar, being the chief executive of the state government, and being conferred by law with the executive authority of the State, should not be allowed to use his official position to sue any member of the public regarding any question or comment raised regarding his administration within the state government. The Menteri Besar, even though he is appointed by the state ruler, acts in the name and on behalf of the state government. Since the state government has been held to have no capacity to maintain the action for defamation against the defendants, it follows that the position of the Menteri Besar is no different from that of the state government (see paras 7–13).

(3) Paragraph 2 of the statement of claim stated that the second plaintiff was an individual. However, other than para 2, the other paragraphs in the SOC were averments by the second plaintiff in his official capacity as Menteri Besar. Further, in the heading to the civil suit, the second plaintiff was cited as 'Dato' Seri Haji Ahmad Bin Said (Menteri Besar Terengganu)'. These clearly showed that second plaintiff was maintaining this action in his official capacity as the Menteri Besar of Terengganu (see paras 15–20).

(4) The second plaintiff had no capacity to maintain this action for defamation in his official capacity. To allow him to do so would be contrary to the rationale and the principles applied from the House of Lords case in *Derbyshire County Council v Times Newspapers Ltd And Others* [1993] 1 All ER 1011 (see para 23).

(5) Any person, whether he is a Chief Minister, Minister or Prime Minister or any other person in a government executive position, can maintain an action for defamation in his personal capacity, but not in his official capacity (see para 24).

[Bahasa Malaysia summary

Atas isu-isu awalan yang dibangkitkan oleh defendan-defendan pada 27 Julai 2012 mahkamah membuat perintah, antara lain, bahawa plaintif pertama sebagai Kerajaaan Negeri Terengganu tidak mempunyai locus standi untuk mengekalkan tindakan untuk tort fitnah terhadap defendan-defendan. Oleh itu, tuntutan plaintif pertama dibatalkan. Isu kemudiannya berbangkit terhadap sama ada plaintif kedua boleh mengekalkan tindakan untuk tort fitnah terhadap defendan-defendan.

Diputuskan, membatalkan tuntutan plaintif kedua dengan kos:

(1) Mahkamah tidak dapat memutuskan kes luar daripada yang telah dibuat di dalam pliding. Walau bagaimanapun, ini tidak menghadkan bidang kuasa inherens Mahkamah untuk mendengar penghujahan atas isu awalan yang patut diputuskan di luar perbicaraan supaya perbicaraan penuh tindakan sivil boleh dijalankan dengan betul dan efisien. Walaupun ia tidak dibangkitkan oleh defendan-defendan dalam penyata pembelaan mereka isu sama ada plaintif kedua boleh mengekalkan tindakan untuk fitnah terhadap defendan-defendan, adalah wajib ke atas mahkamah untuk menentukan atas isu awalan yang penting tersebut sama ada plaintif kedua menyaman defendan-defendan dalam kapasiti rasminya sebagai Menteri Besar Terengganu, atau dalam kapasiti peribadinya, dan sama ada beliau boleh mengekalkan tindakan dalam salah satu atau kedua-dua kapasiti (lihat perenggan 4–5).

(2) Plaintif kedua tidak mempunyai kapasiti, mengikut undang-undang, untuk menyaman defendan-defendan dalam kapasiti rasminya sebagai Menteri Besar of Terengganu. Ini didasarkan atas fakta bahawa Menteri Besar, sebagai ketua eksekutif kerajaan negeri, dan yang diberikan oleh undang-undang dengan kuasa eksekutif negeri, tidak patut dibenarkan menggunakan kedudukan rasminya untuk menyaman mana-mana ahli awam berkaitan mana-mana persoalan atau komen yang dibangkitkan berkenaan pentadbirannya di dalam kerajaan negeri. Menteri Besar, walaupun beliau dilantik oleh Pemerintah Negeri, bertindak di atas nama dan bagi pihak kerajaan negeri. Memandangkan kerajaan negeri diputuskan tidak mempunyai kapasiti untuk mengekalkan tindakan untuk fitnah terhadap defendan-defendan, oleh itu kedudukan Menteri Besar tidak berbeza dari yang kerajaan negeri (lihat perenggan 7–13).

(3) Perenggan 2 penyata tuntutan menyatakan bahawa plaintif kedua adalah individu. Walau bagaimanapun, selain daripada perenggan 2, perenggan-perenggan lain di dalam SOC adalah hujahan-hujahan oleh plaintif kedua dalam kapasiti rasminya sebagai Menteri Besar. Selanjutnya, dalam tajuk tindakan sivil, plaintif kedua dinyatakan sebagai 'Dato' Seri Haji Ahmad Bin Said (Menteri Besar Trengganu)'. Ini

jelas menunjukkan bahawa plaintif kedua mengekalkan tindakan ini dalam kapasiti rasminya sebagai Menteri Besar Terengganu (lihat perenggan 15–20).

(4) Plaintif kedua tidak mempunyai kapasiti untuk mengekalkan tindakan ini untuk fitnah dalam kapasiti rasminya. Untuk membenarkan dia berbuat demikian akan bertentangan kepada rasional dan prinsi-prinsip yang digunapakai daripada kes House of Lords *Derbyshire County Council v Times Newspapers Ltd And Others* [1993] 1 All ER 1011 (lihat perenggan 23).

(5) Mana-mana orang, sama ada dia adalah Ketua Menteri, Menteri atau Perdana Menteri atau mana-mana orang lain di dalam kedudukan eksekutif kerajaan, boleh mengekalkan tindakan untuk fitnah dalam kapasiti peribadinya, tetapi bukan dalam kapasiti rasminya (lihat perenggan 24).]

Cases referred to

Chin Choon @ Chin Tee Faut v Chua Jui Meng [2005] 3 MLJ 494; [2005] 2 CLJ 569, CA (refd)

City of Chicago v Tribune Co (1923) 139 NE 86, SC (refd)

Dato' Idris bin Jusoh v Dato' Seri Tuan Guru Hj Abdul Hadi Awang & Ors [2005] 3 MLJ 344; [2004] 4 CLJ 747, CA (refd)

Datuk Seri Utama Dr Rais bin Yatim v Amizudin bin Ahmat [2012] 2 MLJ 807; [2011] 1 LNS 1441, HC (refd)

Derbyshire County Council v Times Newspapers Ltd And Others [1993] 1 All ER 1011, HC (refd)

Hector v Attorney-General of Antigua and Barbuda [1990] 2 AC 312, PC (refd)

Lee Kuan Yew v Jeyaretnam Joshua Benjamin [1990] 3 MLJ 322, HC (refd)

Lim Guan Eng v Utusan Melayu (M) Bhd [2012] 2 MLJ 394; [2012] 2 CLJ 619, HC (distd)

New York Times Co v Sullivan (1964) 376 US 254, SC (refd)

P & A Systech Sdn Bhd v YAB Dato' Seri Mahdzir Khalid, Menteri Besar Kedah Darul Aman & Anor [2011] 9 MLJ 395; [2011] 2 CLJ 318, HC (refd)

Yew Wan Leong v Lai Kok Chye [1990] 2 MLJ 152; [1990] 1 CLJ (Rep) 330, SC (refd)

Legislation referred to

Government Proceedings Act 1956 ss 2(2), 5, 6, 6(1)

Abdullah Omar bin Bawadi (Hisham Sobri & Kadir) for the second, third and fourth plaintiffs.

Azhana Mohd Khairudin (Mohamed Hanipa & Associates) for the defendants.

Yeoh Wee Siam J:

DECISION (In respect of preliminary issues regarding the second plaintiff)

BACKGROUND FACTS

[1] Upon the preliminary issues raised by the defendants, on 27 July 2012 this court made the ruling, inter alia, that the first plaintiff, being the Government of the State of Terengganu ('the state government'), has no locus standi or capacity to maintain the action for the tort of defamation against the defendants. Accordingly, the first plaintiff's claim in the writ of summons and the statement of claim was struck out, with no order as to costs (see the court's decision dated 27 July 2012).

PRELIMINARY ISSUE REGARDING THE SECOND PLAINTIFF'S ACTION

[2] Having decided the preliminary issue in respect of the first plaintiff, the court ordered both parties to file written submissions regarding the second plaintiff on the next issue, whether the second plaintiff can maintain the action for the tort of defamation against the defendants.

[3] Learned counsel for the second plaintiff submitted that based on the Supreme Court decision in *Yew Wan Leong v Lai Kok Chye* [1990] 2 MLJ 152 at p 155; [1990] 1 CLJ (Rep) 330 at p 133 p 330:

> The court is not entitled to decide a suit on a matter on which no issue has been raised by the parties. It is not the duty of the court to make out a case for one of the parties when the party concerned does not raise or wish to raise the point. In disposing of a suit or matter involving a disputed question of fact it is not proper for the court to displace the case made by a party in is pleadings and give effect to an entirely new case which the party had not made out in its pleadings. The trial of a suit should be confined to the pleas on which the parties are at variance.

[4] I abide by the above decision which lays down the established principle that a court cannot decide a case outside that which has been made out in the pleadings. However, the above case is not a decision which limits this court's inherent jurisdiction to hear submissions on preliminary issues which have to be decided at the outset of the trial in order that the full trial of the civil suit can be undertaken properly and efficiently, without the court being unnecessarily bogged down by any claim which can later be proved to be untenable according to law.

[5] In the present case, even though it was not raised by the defendants in their statement of defence the issue of whether the second plaintiff can maintain the action for defamation against the defendants (which they had done so in the case of the first plaintiff), it is incumbent upon this court, after having ruled against the first plaintiff for the reasons stated in the decision dated 27 July 2012, and having noted that in the intitulement or heading of the civil suit ('the heading'), the second plaintiff has filed the suit as 'Dato' Seri Haji Ahmad bin Said (Menteri Besar Trengganu)', to decide on the crucial preliminary issue whether the second plaintiff is suing the defendants in his official capacity as the *Menteri Besar* of Terengganu, or in his personal capacity, and whether he can maintain the action in either or both capacities.

THE LAW

[6] *Gatley on Libel and Slander,* (9th Ed), 1998 states at p 173 as follows:

> An action for defamation is purely a personal action. The proper person to sue as plaintiff is the person defamed, and the proper person to be sued as defendant is the person who published the defamatory words …

[7] Based on the above, it is clear that the second plaintiff can maintain the action for defamation if he sues the defendants in his personal capacity.

[8] There appears to be no direct authority on the question whether the second plaintiff can sue the defendants for defamation in his official capacity as the *Menteri Besar* of Trengganu.

[9] Under s 5 of the Government Proceedings Act 1956 ('Act 359'), the government shall be liable for any wrongful act committed by any public officer committed in good faith when acting in pursuance of a duty imposed by law. The definition of 'officer' in s 2(2) of Act 359 includes a Minister of the 'government'. The term 'government' has been defined to include the federal government and the government of the states.

[10] Under s 6(1) of Act 359, no proceedings shall lie against the government under s 5 of the same Act unless proceedings for damages for such wrongful act would have lain against such officer personally.

[11] Upon reading s 5–6 of Act 359 together, it can be concluded that the government would be vicariously liable for the acts of its public officers (including a Minister, or a Chief Minister / *Menteri Besar*) committed in good faith when carrying out their duties imposed by law.

[12] Following the rationale in my decision dated 27 July 2012 that the state

government cannot maintain the action for defamation against the defendants, it also means that by applying the same rationale, the second plaintiff has no capacity, according to law, to sue the defendants in his official capacity as the *Menteri Besar* of the State of Terengganu. This is premised on the fact that the *Menteri Besar*, being the chief executive of the state government, and being conferred by law with the executive authority of the state, should not be allowed to use his official position to sue any member of the public regarding any question or comment raised regarding his administration within the state government.

[13] The *Menteri Besar*, even though he is appointed by the state ruler, acts in the name and on behalf of the state government. Since the state government has been held to have no capacity to maintain the action for defamation against the defendants, it follows that the position of the *Menteri Besar* is no different from that of the state government.

[14] The court would now determine the issue of whether the second plaintiff is maintaining the action as a *Menteri Besar*, or in his personal capacity.

Whether the pleadings show that the second plaintiff is suing in his official or personal capacity

[15] The only reference in the statement of claim ('SOC') to the second plaintiff being an individual is found in para 2 where it is stated:

> Plaintiff Ke-2 adalah merupakan seorang individu dan memegang jawatan sebagai Menteri Besar Trengganu dan mempunyai alamat untuk penyampaian di Tingkat 16, Wisma Darul Aman, Pejabat Menteri Besar Trengganu …

[16] However, para 2 only states that the second plaintiff is an individual ie an individual person, as opposed to a government (as in the case of the first plaintiff), or a corporation.

[17] Other than para 2, the court finds that the other paragraphs in the SOC are averments by the second plaintiff in his official capacity as *Menteri Besar*. This can be clearly seen in paras 27(a)–(i), and para 31 as follows:

> Dalam maksudnya yang asal dan biasa, perkataan-perkataan dan/atau kenyataan-kenyataan yang terkandung di dalam Artikel Fitnah tersebut adalah bermaksud dan/atau difahami bermaksud bahawa:
>
> (a) *Plaintif Pertama dan Plaintif Ke-2 tidak telus dalam pemberian kontrak* membekalkan pakaian dan alatan sekolah di bawah Program Bantuan Pakaian dan Alatan Sekolah tersebut;

(b) *Plaintif Pertama dan Plaintif Ke-2 telah salah urus kontrak* dan/atau Program Bantuan Pakaian dan Alatan Sekolah tersebut;

(c) *Plaintif Pertama dan Plaintif Ke-2 telah secara salah mendapatkan keuntungan yang besar* daripada Program Bantuan Pakaian dan Alatan Sekolah tersebut;

(d) *Plaintif Pertama dan Plaintif Ke-2 telah menyelewengkan Program Bantuan Pakaian dan Alatan Sekolah* tersebut yang sepatutnya diberikan kepada pelajar-pelajar miskin di negeri Trengganu yang berkelayakan;

(e) *Plaintif Pertama dan Plaintif Ke-2 telah menipu pelajar-pelajar miskin* di negeri Trengganu berkenaan Program Bantuan Pakaian dan Alatan Sekolah tersebut;

(f) *Plaintif Pertama dan Plaintif Ke-2 telah bertindak demi kepentingannya sendiri* tanpa mengambil peduli kebajikan pelajar-pelajar miskin di negeri Trengganu;

(g) *Plaintif Pertama dan Plaintif Ke-2 bukanlah seorang Menteri Besar dan/atau sebuah kerajaan negeri yang efisien dalam menguruskan hal ehwal pentadbiran, ekonomi dan pembangunan negeri Terengganu*;

(h) *Plaintif Pertama dan Plaintif Ke-2 adalah seorang Menteri Besar dan/atau sebuah kerajaan negeri yang tidak bertanggungjawab, tidak amanah dan tidak boleh dipercayai*;

(i) *Plaintif Pertama dan Plaintif Ke-2 adalah seorang Menteri Besar dan / atau sebuah kerajaan negeri yang tidak layak untuk mentadbir negeri Terengganu*;

(j) Plaintif Ke-3 dan Plaintif Ke-4 telah bersubahat dan bersekongkol dengan Plaintif Pertama dan Plaintif Ke-2 berkenaan Program Bantuan Pakaian dan Alatan Sekolah tersebut; and

31. Penerbitan perkataan-perkataan dan/atau kenyataan-kenyataan yang tidak benar dan/atau berniat jahat dan/atau berunsur fitnah yang terkandung di dalam Artikel Fitnah yang diterbitkan di dalam akhbar Harakah *telah menjejaskan reputasi dan nama baik Plaintif Pertama sebagai sebuah kerajaan yang mentadbir negeri Terengganu dan/atau Plaintif Ke-2 vang merupakan Menteri Besar Terengganu yang bertanggungjawab untuk membela nasib rakyat negeri Terengganu* dan atau sifat, kredit dan operasi Plaintif Pertama dan Plaintif Ke-2 telah dibawa ke skandal, keaiban dan penghinaan awam dan telah menanggung malu, derita dan kerugian. (Emphasis added.)

[18] The above averments, fortified by the fact that in the heading to the civil suit, the second plaintiff is cited as 'Dato' Seri Haji Ahmad bin Said (*Menteri Besar* Terengganu)' show clearly that the second plaintiff is maintaining this action in his official capacity as the *Menteri Besar* of Terengganu. The following are my reasons:

(a) in paras 27(a)–(f) of the SOC, the second plaintiff is always cited together the first plaintiff (which is the state government) ie 'plaintif

pertama dan plaintif ke-2'. This clearly shows that the second plaintiff is suing the defendants in his official capacity, together with the state government;

(b) in paras 27(g)–(i) of the SOC, it is shown even more expressly that the second plaintiff is suing the defendants in his official capacity:

> … Plaintif Ke-2 bukanlah seorang Menteri Besar yang efisien … (see para 27(g));
>
> … Plaintif Ke-2 adalah seorang Menteri Besar yang tidak bertanggungjawab … (see para 27(h)); and
>
> … Plaintif Ke-2 adalah seorang Menteri Besar … yang tidak layak untuk mentadbir negeri Terengganu; (see para 27(i)).

(c) in para 31, it is made most explicit, and in fact amplied, that the second plaintiff is suing the defendants in his official capacity. This can be seen from the words used '… Plaintif Ke-2 yang merupakan Menteri Besar Terengganu …' and

(d) if indeed the second plaintiff is suing the defendants in his personal capacity, he would not in the first place state his position, '(Menteri Besar Terengganu)', below his name in the heading to the civil suit.

[19] Throughout the averments, the second plaintiff had always referred to the first plaintiff (which is the State Government of Trengganu) and then to himself, which proves that he is maintaining the action in his official capacity, acting together with, or on behalf of, the first plaintiff.

[20] Learned counsel for the second plaintiff cited the following cases to show that the plaintiff or defendant in those cases could sue, or were sued, as the case may be, for defamation in their official capacity. However, with respect I do not agree that the respective plaintiffs in those cases were suing in their official capacity:

(a) *Dato' Idris bin Jusoh v Dato' Seri Tuan Guru Hj Abdul Hadi Awang & Ors* [2005] 3 MLJ 344; [2004] 4 CLJ 747:

Defendan pertama adalah Menteri Besar Trengganu dan Presiden Parti Islam SeMalaysia (PAS).

In my view, this case is not applicable here because it is regarding the first defendant being sued as a *Menteri Besar*. It is not regarding him suing as a plaintiff, as in the present case.

Be that as it may, as I had stated earlier in this decision, a *Menteri Besar* can be sued in his official capacity and the state government can be vicariously liable for his wrongful acts committed in the course of performing his legal duties (see s 5–6 of Act 359);

(b) *P & A Systech Sdn Bhd v YAB Dato' Seri Mahdzir Khalid, Menteri Besar Kedah Darul Aman & Anor* [2011] 9 MLJ 395; [2011] 2 CLJ 318:
Here again the case would not apply to the present case since the first defendant was then the *Menteri Besar* of Kedah. My above views regarding *Dato' Idris Jusoh* would apply as well;

(c) *Lim Guan Eng v Utusan Melayu (M) Bhd* [2012] 2 MLJ 394; [2012] 2 CLJ 619, where at the material time the plaintiff was the Chief Minister of Penang, the member of Parliament for the Began Parliamentary constituency and the state assembly member for the State Constituency of Air Puteh. The plaintiff was also the secretary-general of the Democratic Action Party (DAP).
In my view, *Lim Guan Eng* ought to be distinguished from the present case. Nowhere in that case is it stated that the plaintiff was suing the defendant in his official capacity as the Chief Minister of Penang. The position of Chief Minister is not stated in brackets below the plaintiff's name in the heading to that civil suit. The averments on his various positions only show that plaintiff was at the material time holding various positions amongst which include the position of Chief Minister. In that case too, the issue was never raised on whether the plaintiff was suing in his official capacity or personal capacity. Without any reference of suing in his official capacity, especially as can be seen in the heading to the civil suit, by the mere citation of his name only, but not his position as Chief Minister, it is implicit that the plaintiff was maintaining the action for defamation in his personal capacity;

(d) similarly in *Datuk Seri Utama Dr Rais bin Yatim v Amizudin bin Ahmat* [2012] 2 MLJ 807; [2011] 1 LNS 1441, the issue was never raised on whether the plaintiff was suing in his official or personal capacity. What is to be noted is that the position as Minister was not stated in brackets at the heading of the civil suit below the name of the plaintiff, as was done in this case. There is no doubt that in the judgment, the learned judge referred to the plaintiff as a senior politician, a qualified lawyer, a member of Parliament of Jelebu, and at the material time a Minister in the Cabinet, but it is clear that the learned judge did not have to deal with the issue whether the plaintiff was suing in his official or personal capacity. By the very fact that the plaintiff was cited in his personal name, without any reference to his position as a Minister, it is implicit that he was suing in his personal capacity even though he was holding the position of a Minister;

(e) in *Lee Kuan Yew v Jeyaretnam Joshua Benjamin* [1990] 3 MLJ 322, the plaintiff did not state in brackets in the heading to the civil suit, below his name, his position as the Prime Minister of Singapore. Neither was it raised in the case the issue of whether he was suing in his official or personal capacity. Therefore, here again, it is implicit that the plaintiff,

even though he was then the Prime Minister of Singapore, was maintaining the suit for defamation in his personal capacity; and

(f) *Chin Choon @ Chin Tee Faut v Chua Jui Meng* [2005] 3 MLJ 494; [2005] 2 CLJ 569 where the Minister was the defendant. My view on this case is the same as my reasoning given for *Dato' Idris Jusoh* and *P & A Svstech Sdn Bhd*.

[21] From the above authorities, it is observed that nowhere was it stated that the respective plaintiff was suing in his official capacity. In none of the cases, was the plaintiff cited in the heading to the civil suit with his official position stated in brackets below the name of the plaintiff. In addition to this, in none of the above cases, was the plaintiff suing as a co-plaintiff with the government. This, therefore, fortifies my finding that the second plaintiff in the present case is, without doubt, maintaining the suit in his official capacity when he stated his position as the *Menteri Besar* of Terengganu after his name in the heading, and in the manner that he worded his averments in his statement of claim.

[22] It is trite practice and procedure that when a person sues another person in his personal capacity, there is no necessity or requirement that he states his position/capacity in brackets below his name as the plaintiff. However, if he is suing in a specific capacity, other than in his personal capacity, then he has to state such capacity in brackets below his name eg in the case of the third and fourth plaintiffs in the present case, the words '(trading as Hanie Enterprise)' are stated below their respective names to indicate that they are suing in their trading or business capacity.

[23] If the second plaintiff had intended to sue the defendants in his personal capacity, he would not have added his official position in brackets after his name in the heading to the civil suit. Since he had done so expressly, and by construing this together with all his averments in his statement of claim, the court is satisfied that the second plaintiff has no capacity to maintain this action for defamation in his official capacity. To allow him to do so would be contrary to the rationale and the principles which I had laid down and applied from the House of Lords case in *Derbyshire County Council v Times Newspapers Ltd And Others* [1993] 1 All ER 1011 (see my decision dated 27 July 2012).

CONCLUSION

[24] In conclusion, due to strong public interest considerations, this court is of the opinion that any person, whether he is a Chief Minister, Minister or Prime Minister or any other person in a government executive position, can maintain an action for defamation in his personal capacity, but not in his official capacity. To allow such person (in this case, the second plaintiff as the

Menteri Besar of Trengganu) to do so would tantamount to intimidating members of the public and striking fear in them, thereby stifling or discouraging constructive public criticism or question of government administration in situations where such criticism or question is necessary for the public good (see also the decision of the Supreme Court of Illinois in *City of Chicago v Tribune Co* (1923) 139 NE 86 which was cited in *Derbyshire*, and the decision of the Supreme Court of the United States in *New York Times Co v Sullivan* (1964) 376 US 254, 277, and the decision of the judicial committee of the Privy Council in *Hector v Attorney–General of Antigua and Barbuda* [1990] 2 AC 312 which cases, though not binding precedents, are rather persuasive authorities).

[25] Any threat of civil action for libel by a Chief Minister or any other Minster, in the official capacity, would have a 'chilling effect' and be detrimental to the constitutional right of freedom of speech in a civil and progressive society.

THE COURT'S RULING

[26] Therefore, in view of my finding that the second plaintiff did not sue in his personal capacity, but in his official capacity, on 28 August 2012, I ruled that the second plaintiff cannot be allowed to maintain his action against the defendants for defamation. Accordingly, the second plaintiff's claim in the writ of summons and the statement of claim is struck out. Costs of RM5,000 are to be paid by the second plaintiff to the defendants within 14 days from the date of this order.

[27] In the case of the first plaintiff, in my decision dated 27 July 2012, I did not order costs against the State Government of Trengganu since that decision involves a novel point which has not been tested or decided before.

Second plaintiff's claim struck out with costs.

Reported by Kanesh Sundrum